



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2004

Ms. Renee Ann Mueller
District Attorney
Twenty-First Judicial District
100 West Buck, Suite 407
Caldwell, Texas 77836

OR2004-1047

Dear Ms. Mueller:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197132.

The District Attorney for the Twenty-First Judicial District (the "D.A.") received two requests for information pertaining to a collision that occurred on November 2, 2000. The D.A. states she does not possess many of the requested records. The D.A. claims the submitted information is excepted from public disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that the requested information is confidential under the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the

information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. The portions of information the D.A. has marked are not records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. Therefore, none of the marked portions are confidential under the MPA.

Section 773.091 of the Health and Safety Code:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091. This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). The portions of information the D.A. has marked are not records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider. Therefore, none of the marked portions are confidential under section 773.091.

Next, we address the D.A.’s section 552.108 assertion for portions of the information. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

The D.A. argues the marked information is excepted under section 552.108 because it is not basic information. *See* Gov’t Code § 552.108(c) (section 552.108 is inapplicable to basic

information about an arrested person, an arrest, or a crime). This argument is insufficient to demonstrate the applicability of section 552.108. The D.A. failed to explain how release of the information would interfere with the detection, investigation, or prosecution of crime or that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Thus, the D.A. may not withhold the marked portions under section 552.108.

Lastly, the D.A. argues some of the information is excepted under section 552.130. First, we note that one of the submitted records is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has provided the department with the date of the accident and the name of the person involved in the accident. Because section 550.065(b) governs the release of the accident report, you must release the accident report in its entirety to the requestor under section 550.065(b).

We will consider the D.A.'s section 552.130 assertion for the remaining information for which the D.A. claims this exception. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the motor vehicle information you have marked under section 552.130. However, the purpose of section 552.130 is to protect a person's privacy. Therefore, the requestor has a special right of access to his client's motor vehicle information pursuant to section 552.023 of the Government Code. Section 552.023 provides a person or a person's authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Hence, the D.A. must release motor vehicle information belonging to the requestor's client to him.

In summary, except for the motor vehicle information belonging to the requestor's client, the D.A. must withhold the motor vehicle information in the offense report and inventory and impound document that you have marked under section 552.130. The D.A. must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 197132

Enc: Submitted documents

c: Mr. Robert A. McAllister, Jr.
Law Offices of Robert A. McAllister, Jr., P.C.
Regency Square Tower
6200 Savoy, Suite 630
Houston, Texas 77036
(w/o enclosures)